

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)
)
)

Petition for Declaratory Ruling on
Video Relay Service Interoperability

) CC Docket No. 98-67

)

) CG Docket No. 03-123

)

COMMENTS OF
COMMUNICATION SERVICE FOR THE DEAF

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SUMMARY

Conditioning the provision of free video equipment on an exclusivity arrangement that technically and contractually blocks VRS customers from making or receiving calls through other VRS providers is a restrictive and unfair practice that denies functionally equivalent communication service to both deaf and hearing VRS users. In addition to violating various FCC statutory provisions and policies requiring the interconnection of a seamless and integrated telephone network, this practice is unjust and discriminatory, anti-competitive, poses significant dangers in emergency situations, and may promote contracts that are unconscionable.

Consumers should not be asked to give informed consent to waive their right to interoperable relay service because this is a right that is guaranteed by the Americans with Disabilities Act's mandate for functionally equivalent relay services. Moreover, many, if not most, consumers do not fully understand principles of interoperability or the extent to which they are giving up a portion of their telephone access when they accept equipment that restricts interoperability. Not only is this provision typically buried in the fine print of a contract in English (when the consumers' preferred language is ASL), but the voluntarily nature of a consumer's consent is highly suspect, given the consumer's overpowering need to accept the equipment in order to acquire telephone access. In addition, some individuals, including hearing persons and deaf and hard of hearing students

in universities, do not even have the option of giving informed consent before being denied interoperability.

Under the present scheme, VRS consumers must acquire and maintain multiple devices in order to make and receive calls to their entire universe of telephone contacts. This is discriminatory, burdensome, and because of technical limitations placed on incoming calls, cannot achieve functionally equivalent telephone service. Because, under this restrictive system, hearing people can never know whether their VRS calls will reach their destination, the present scheme also discourages hearing people from using VRS. In addition, by maintaining a closed LDAP that denies dialing parity to those not within that system, the current scheme runs counter to the FCC's 711 efforts to facilitate access to TRS through easy dialing arrangements. Finally maintaining an exclusive pool of sign language interpreters that can only be used to serve a select group of customers also makes inefficient use of the presently limited supply of interpreters in the United States, because those consumers are unable to use the interpreters of an alternate provider when the restricted provider is operating at capacity.

Money flowing through the federally administered TRS Fund should not be used to support restrictive and anti-competitive practices that block VRS calls. If left to continue, the present scheme will produce a VRS monopoly by one VRS provider that will reduce incentives to adequately respond to consumer needs in a free and open marketplace.

Hearing people are able to “stay connected” with others by picking up a telephone, getting a dial tone, and calling or receiving calls from anyone on that telephone, regardless of the carrier that the caller or the called party uses. The FCC must require an equal level of telephone communications access for VRS users.

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I. Introduction

On February 15, 2005, the California Coalition of Agencies Serving the Deaf and Hard of Hearing (Petitioners) submitted a petition requesting the Federal Communications Commission (FCC) to prohibit any video relay service (VRS) provider receiving compensation from the Interstate Telecommunications Relay Services (TRS) Fund (TRS Fund) from restricting customers to a single video relay service either contractually or via the hardware or software provided to those customers.¹ Communication Service for the Deaf, Inc. (CSD) submits these comments in support of the Coalition's Petition. CSD's interest in this proceeding as both a consumer and a provider of VRS has been longstanding.

¹ On March 1, 2005, the FCC released this petition for public comment. "Petition for Declaratory Ruling Filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing Concerning Video Relay Service (VRS) Interoperability, Public Notice, DA 05-509 (March 1, 2005).

As the Petitioners note, one VRS provider currently conditions its provision of free video equipment on an exclusivity arrangement that technically and contractually blocks its customers from making or receiving calls through other VRS providers. This restrictive and unfair practice denies functionally equivalent communication service to both deaf and hearing VRS users. CSD agrees with the arguments made by the California Coalition that this or any denial of VRS interoperability violates the following sections of the Communications Act: Section 225, requiring functionally equivalent telephone service; Section 1, requiring universal service; Section 201, prohibiting unjust or unreasonable practices; Section 202(a), prohibiting unreasonable discrimination; Section 251, requiring telecommunications carriers to interconnect with one another and provide dialing parity, and prohibiting the installation of network features or capabilities not consistent with Sections 255 and 256, and Section 256, permitting the Commission to develop standards for network interconnectivity to make communication services accessible to people with disabilities. Virtually all of these provisions have played an integral role in our nation's efforts to have telecommunications provided through an open architecture that provides all people seamless access to all telecommunications networks.

The petition's various discussions of Sections 201, 202, 251, 255, and 256 aptly convey the way in which our national telecommunications policies have been shaped by the goals of interconnection and interoperability, and

need not be restated here. That these provisions are contained in Title II, which generally applies to common carriers providing telecommunications services, should not make a difference to their application in the instant situation. More specifically, the FCC need not reach the question of whether TRS or VRS is a telecommunications or an information service in order to hold all VRS providers accountable under these provisions.² The key to VRS is that it is a transmission service intended to facilitate the functionally *equivalent* of telephone communications that are provided by common carriers to the hearing public. As such, when VRS providers provide service to the public, they are simply substituting for common carriers – and must comply with the same Title II obligations that apply to those carriers.³ This is consistent with the language and legislative history of Section 225, all of which was designed to ensure that the services offered by TRS providers

² Prior FCC rulings are inconsistent on this point. While paragraph 81 of the FCC’s March 2000 Improved TRS Order seems to suggest that TRS is an information service, *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order*, CC Dkt. No. 98-67 (March 6, 2000), the Commission’s Internet Relay Order, which was released after the 2000 Order, left this question open. *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc., Declaratory Ruling*, CC Dkt. No. 98-67 (April 22, 2002) at ¶13, 14 (finding that whether a particular TRS service is also a “telecommunications” or “information” service was *not* relevant to whether Internet relay was eligible for TRS reimbursement, and concluding that the Commission would “not[] make a finding as to whether IP Relay constitutes telecommunications, telecommunications service, or information service.”)

approximate, as closely as technically possible, common carrier services required under the various provisions of Title II. In keeping with this national policy, CSD urges the FCC to prohibit any VRS provider who receives compensation from the TRS Fund from restricting its customers to a single VRS provider, and from blocking calls from individuals who are not customers of that provider. CSD also agrees with the Petitioners that the FCC has sufficient authority to impose a requirement of VRS interoperability under various sections of the Communications Act.⁴

CSD would like to clarify that there is nothing wrong with a company developing proprietary technologies that can be used by its own customers to access its relay services. The right to be able to develop such technologies without the fear of being forced to share them with other companies, is key to fostering technological innovations that can benefit consumers. It is only when such technologies are specifically used or designed to block calls to or from customers that violations of the Communications Act can, and do occur.⁵

³ Were this not the case, Congress would not have put Title IV of the ADA into Title II of the Communications Act. Indeed, even though VRS is an Internet-based service, at least one end of the call connects to the PSTN.

⁴ Petition at 23-24, citing Sections 1,2,3 and 225 of the Communications Act.

⁵ For example, although HOVRS has a proprietary software that links users to its relay services, that software does not prevent individuals who use this software from installing other software on their computers to access the services of HOVRS' competitors. This type of proprietary technology should continue to be permissible, so long as – to the extent that it is technologically feasible – the technology does not block incoming or outgoing calls through other providers.

II. As a Substitute for a Common Carrier Service, all Video Relay Services Must Allow VRS Users to Make Outgoing and Receive Incoming Calls Through Multiple Providers.

The matter presented to the Commission is not a complicated one. Title IV of the Americans with Disabilities Act (ADA) was designed to replace the restrictive and inconsistent practices previously characteristic of state relay programs with a uniform, seamless, and integrated telecommunications relay system that is functionally equivalent to the telephone system used by the hearing public. Without interoperability, VRS users do not have functionally equivalent telephone service.

Hearing people can pick up a telephone, get a dial tone, and call anyone or receive a call from anyone on that phone, regardless of the telephone carrier that the caller or the called party uses. Even wireless customers, who typically pre-select a specific provider and wireless device, can have their calls roam on the networks of other providers if network blockages or limited coverage prevent their calls from going through their chosen carrier. And under no scenario – wireline or wireless – does a hearing person ever have to worry that incoming calls to his phone will be turned away simply because the calling party subscribes to a different telephone service.

When using the dominant VRS provider, however, consumers do not have the same seamless access to the nation's telecommunications networks that hearing people enjoy. If – as the Commission recently said – “for a TRS user, reaching a CA to place a relay call is the equivalent of picking up a

phone and getting a dial tone,”⁶ VRS users who use the dominant VRS provider’s service are *not* “getting a dial tone.”

A. The failure to provide interoperability violates Section 225(d)(1)(E), prohibiting TRS providers from failing to fulfill the common carrier obligation not to refuse calls, and sections of the Communications Act prohibiting discrimination against consumers and providers.

Because TRS is intended to provide an accessible substitute for voice telephone service that is provided by common carriers, Section 225 explicitly prohibits relay operators from “*failing to fulfill the obligations of common carriers* by refusing calls or limiting the length of calls that use telecommunications relay services.”⁷ This mandate applies to calls that are made to or from deaf individuals through a relay center. A provider that blocks all calls to deaf VRS users from unsuspecting hearing callers when those calls are made over a competitor’s network, is in flagrant violation of this statutory mandate.

At present, when a hearing person tries to use a competitor’s service to call a customer of the dominant provider through its exclusive database of restricted “telephone numbers,” (its LDAP or “lightweight directory access protocol”), the call will be blocked because of the way that the dominant provider has set up its numbering scheme. Specifically, through its hardware and software, the dominant provider has created a “closed” network that will

⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CC Dkt. No. 98-67, CG Dkt No. 03-123, DA 05-140 (January 26, 2005) (Declaratory Ruling) at 4.

only respond to incoming calls placed over its own network, to the exclusion of all “outside” callers. This not only violates the mandate that TRS providers handle all calls, it also violates various provisions of the Communications Act that prohibit discrimination against telephone users and competing telephone providers.⁸ Among these various provisions is Section 225 itself, under which Congress intended for TRS providers to “provide relay services on a nondiscriminatory basis to all users within their serving areas.”⁹

Preventing customers from being able to easily access anyone, at anytime, and restricting incoming calls from certain users also conflicts with the clear intent of the telecommunications mandates of the ADA to take “a major step towards enabling individuals with hearing and speech impairments to achieve the level of independence in employment, public accommodation and public services sought by other sections of the ADA.”¹⁰ An individual does not have an equal opportunity to secure employment under Title I of the ADA if she cannot receive calls from a potential employer

⁷ 47 U.S.C. §225(d)(1)(E) (emphasis added).

⁸ Section 202(a) prohibits carriers from discriminating in the provision of a like communication service “directly, or indirectly by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality.” Section 251(b)(3) requires carriers to offer competing providers “non-discriminatory access to telephone numbers.” And section 256(a) is intended “to promote nondiscriminatory accessibility by the *broadest number of users and vendors* of communications products and services.”

⁹ S. Rep. No. 116, 101st Congress., 1st Sess. at 81 (1989).

¹⁰ *Id.* at 79.

who uses a competitor's VRS; a citizen cannot participate in democratic processes under Title II if he cannot receive a return call from his assemblyman; a patient will not have full access to medical services under Title III without being able to trade calls with her physician.

B. Practical and contractual restrictions that block incoming calls are in violation of Sections 225 and 201.

Although it may be *technically* feasible for an outside caller not in the dominant provider's network to reach one of the dominant provider's customers, this is not *practically* feasible, nor is it *contractually* permitted. First, IP addresses are typically dynamic – they change constantly – and most consumers have no idea what their IP addresses are at any given time. The only truly feasible way for an outside caller to “dial around” the dominant provider's LDAP is to access the recipient's static IP address, *if* the recipient has one of these addresses. But static IP addresses are costly and are not always available for residential customers. VRS consumers already have to incur substantial monthly expenses for broadband service that well exceed the cost of regular telephone service. These consumers typically do not – nor should they have to – incur the added expense of purchasing a static IP address.¹¹ Indeed, in the ADA, Congress made abundantly clear

¹¹ For example, a single static IP address from Time-Warner Cable costs \$79.95, compared to a single dynamic IP address that is available for \$44.95. This is well above the average \$15-20 cost for a residential telephone line over the PSTN. Even worse, Time-Warner does not even offer a single static IP address for its residential customers.

that TRS users were not expected to incur costs over and above those incurred by conventional voice users to receive equivalent telephone service.¹²

Yet, even assuming that the called party does have a static IP address that can be accessed by the calling party, *even then*, the outside caller would not be able to complete a call made on a competitor's network to one of the dominant provider's customers because the dominant provider's exclusivity contract prohibits these calls from reaching its customers. By no stretch of the imagination could this be permissible under a federal mandate that directs TRS providers to handle all calls typically handled by common carriers.¹³ One only has to compare this arrangement with the telecommunications services available to hearing people to recognize the absurdity of such an arrangement: the FCC would be hard-pressed to imagine a situation where a landline customer subscribed to Verizon's services would not be able to accept calls from MCI's customers, or where a wireless customer using Cingular would not be able to accept calls from someone using T-Mobile. There are hundreds of telephone companies across the country; were the restrictive VRS arrangement taken to its logical conclusion for voice users, hearing people would be forced to have multiple

¹² 47 U.S.C. §225(d)(1)(D).

¹³ As the Coalition's petition notes, the only exception to a TRS provider's obligation to handle all calls occurs when these calls are technically infeasible, such as coin sent-paid relay calls. Petition at 6-7. The blockage occurring in the instant situation is not technically infeasible; rather it is an unnecessary and intentional barrier to all calls made through a competitor's service.

devices just to contact and receive calls from subscribers of different phone companies. No hearing person would ever put up with having such an arrangement; nor should any deaf or hard of hearing person have to do so.

The FCC's overriding interest in keeping network architecture open and interoperable among communication carriers was recently demonstrated in the Commission's decision to fine Madison River Telephone Company for blocking its ports to calls made over the Internet (VoIP calls). The decision, brought under the authority of Section 201(b) (requiring carriers to provide "just and reasonable" communication service practices), is consistent with the FCC's longstanding policy to ensure a seamless communications network that is equally available to all Americans, and further highlights the need for all VRS providers to keep their ports open to all VRS calls, regardless of the providers handling those calls. The decision is particularly relevant to this case because it prohibited blockage of an Internet, rather than a PSTN, telephone service. As noted by Petitioners, "failing to allow access to the services of other [VRS] providers violates Section 201's guarantees that consumers will have equal access to the telecommunications carrier of their choice, a right that exists regardless of who supplies the customer's telephone equipment."¹⁴

III. Informed Consent to Use Multiple Video Devices Will Not Achieve a Functionally Equivalent Substitute

¹⁴ Petition at 28.

CSD appreciates the FCC's recent rulings outlawing certain VRS marketing practices and believes these rulings to be in consumers' best interests.¹⁵ However, while the January 26th rulings took important steps toward achieving greater functional equivalency for VRS users, these orders did not go far enough. Specifically, while the FCC appropriately concluded that "VRS consumers cannot be placed under any obligation to use only one VRS provider's service," it went on to suggest that consumers can give informed consent for a VRS provider to configure the consumer's video equipment in a way that blocks access to other VRS providers. According to the FCC, consumers who allegedly provide such "consent" can then acquire multiple video devices in order to access other VRS providers. For various reasons, this approach is both unrealistic and contrary to principles of functional equivalency.

A. Consumers generally do not have a clear understanding of the restrictions being imposed upon their VRS use.

There are a number of reasons why it is unfair to expect consumers to waive their right to functionally equivalent VRS by giving informed consent. First, it is highly questionable that the vast majority of VRS consumers are sufficiently acquainted with issues of interoperability to understand that they are giving up their right to access other providers when they accept a video

¹⁵ *See Federal Communications Commission Clarifies that Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds that Video Relay Service (VRS) May Not*

device. The FCC has not defined the manner in which informed consent must be obtained; as a consequence, providers remain free to use whatever method they themselves deem suitable. It is CSD's understanding that consumers receiving VP-100s are provided with information about the exclusivity conditions imposed upon their VRS usage in the small print of multi-paged contracts that are composed in English, despite the fact that many of these individuals have limited English skills and rely on ASL as their primary mode of communication. Asking these recipients to read and understand the fine print of a contract in English is the unconscionable equivalent of expecting them to sign their rights away after being given a contract in a foreign language.

Yet, it is more than likely that even those VRS users who do have strong English skills are hardly aware of the implications of the exclusivity provision. In a recent lawsuit, Texas's Attorney General, Greg Abbott, sued Vonage for the company's failure to adequately inform its customers about the limited ability of its VoIP service to handle 911 calls. Despite the provision of information about this restriction through an Internet registration form, e-mail notifications to customers who did not activate Vonage's alternate emergency service, and a users guide, Abbott remained

be Used as a Video Remote Interpreting Service, Public Notice DA 05-141 (January 26, 2005) (Public Notice); Declaratory Ruling, *supra* n.6.

concerned that consumers were potentially being misled.¹⁶ He feared that people were finding out too late that they would not have the same kind of 911 service that was available with regular landline phones, and that consumers were giving up their access to emergency services simply because they were attracted to cheap VoIP rates.

Far fewer steps than those used to alert Vonage's customers about the company's 911 limitations are used by the dominant VRS provider to alert its customers of the restrictions imposed upon their VRS use. And just as people using VoIP services may find out too late that they cannot use 911 services, VRS users typically do not find out until after they have the VP-100 in their homes that they have only limited access to make and receive calls with this equipment. It is understandable, and even predictable, that these individuals, who have been able to use a single device (a TTY or computer) for all of their text-to-voice relay calls for the past fifteen years, would expect to receive the same level of telecommunications access as they shift to this video technology. They have no reason to expect that they will not be able to

¹⁶ According to Abott, "consumers aren't always aware of the shortcomings. They often must pore over small type and wrestle with complex technology just to get basic phone service." "Net Phone Firm Vonage Sued Over 911 Access," LA Times (March 23, 2005). Abott was particularly concerned with the need for consumers to read through the fine print on a website to obtain this information and with the company's failure to disclose its lack of access to 911 in advertisements and brochures. *See also*, "Lawsuit says Vonage fails to properly warn users about limits to 911 system access," Associated Press (March 23, 2005).

access multiple providers, nor that all hearing people trying to call them through a competitor's service will be blocked from reaching them.

In addition, several groups of individuals forced into using a single VRS provider are incapable of agreeing to this restriction. Specifically, hearing individuals who must use the dominant provider to access the dominant provider's customers, are never given the opportunity to give their informed consent for this purpose. In addition, deaf and hard of hearing students and faculty in schools and universities are unwittingly bound by the agreements signed by their institutions. Although the school's administration agrees to using the restrictive equipment under the provider's closed conditions, the students and faculty are never given the option to provide or withhold their informed consent for this purpose.¹⁷

B. Even those consumers who give consent, do not do so willingly.

The notion of "informed consent" implies a level of voluntary action taken on the basis of complete information. In other words, a waiver of one's rights presupposes knowledge, actual or constructive, of the existence of that right and of all the material facts upon which those rights depend, as well as

¹⁷ Educational institutions that engage in this practice and that receive federal funding may be at risk of violating Section 504 of the Rehabilitation Act by severely restricting the telephone access of their students and employees. In addition, they may be at risk of violating Title II of the ADA if they are affiliated with a local or state government, and with Title III of the ADA even if they have no governmental nexus whatsoever.

an action that is designed to relinquish that right.¹⁸ In the instant situation, not only are consumers not receiving complete information, but there can be no real “consent” because consumers are not truly free to reject the restrictions that are being placed upon them.

It is now well-established that VRS is the preferred mode of telephone communication for deaf consumers wishing to converse in their natural language, and the *only* mode of communication for others who are unable to type (children, senior citizens, people for whom English is not their first language). The pressures imposed on all of these consumers to accept VP-100s, even with its restrictive terms, are great: consumers must agree to the exclusivity arrangement because they know that the availability of video devices is limited (there are long waiting lists), and that if they do *not* accept the equipment on the provider’s terms, they will not be able to receive the equipment at all. Put simply, without the equipment, a consumer’s access to friends, relatives and colleagues is cut off.¹⁹ Under duress, the user is put in

¹⁸ See e.g., Hammond v. Pacific Mut. Life Co. (E.D. Va. 2001); American Hardware Mut. Ins. Co. v. BIM, Inc., 885 F. 2d 132, 138-9 (4th Cir. 1989); King Soopers v. N.L.R.B., 254 F. 3d 738 (8th Cir. 2001) (waiver must be intentional; mere negligence, oversight or thoughtlessness does not create a waiver).

¹⁹ In addition, as noted by Petitioners, the inducement to accept the equipment largely results from the network effects that have been created by the provider’s closed network of point-to-point users: the larger the universe of users within the provider’s closed system, the more that others want to join. CSD agrees with Petitioners’ arguments comparing these network effects with the effects of AOL’s restrictive instant messaging practices. See Petition at 10-17. The dominant VRS provider has leveraged this marketing scheme and its closed LDAP to lock customers into using only its VRS, the

a no-win situation: he can accept the equipment and receive limited access, or turn it down and get no access at all. The motivation – no the need – to accept the terms of the agreement is great, even if the access provided through that agreement will be compromised. There is no real informed *consent* here; if truly given the choice to consent or decline the condition, no consumer would *choose* to be restricted in this fashion.²⁰

A number of factors go into whether a contract between two parties is unconscionable, including the extent to which there is an inequality of bargaining power between the signatories, the extent to which all pertinent information is disclosed (e.g., in fine-print versus a clear disclosure), the extent to which the signatories understand the terms of the agreement, and the existence of meaningful choice by the parties to the contract.²¹ CSD submits that the contract being entered into by the dominant provider's customers may, in fact, be unconscionable: consumers have no bargaining power to decline the non-interoperability condition, the condition is buried in a dense contract that is given to the consumer, in a language other than the consumer's native language, consumers often do not understand the limitations being imposed upon them, and consumers have no real choice but

same way that its previous, and now outlawed, rewards programs had the effect of locking customers into using its service.

²⁰ Indeed, most consumers do not even find out about the restrictive policy until the equipment is actually being installed in their residences. By then, it becomes a "take it or leave it" situation.

²¹ E. Allan Farnsworth, Contracts (3rd Ed. Aspen Publishers, Inc.) at ¶4.28, pp 311-314 (1999).

to accept the contract if they want to have functionally equivalent telephone communication and in many cases, any telephone communication at all. The FCC should not use federally administered funds to condone or support this type of contractual arrangement.

C. It is unfair to expect consumers to knowingly consent to a waiver of their rights under the ADA.

Finally, it is unfair and discriminatory to ask a VRS user to knowingly give up legal rights that have been guaranteed under a federal law. The right to make and receive relay calls like voice users is mandated by the ADA, in the same way that other functionally equivalent mandates, such as caller confidentiality and equivalent calling rates, are mandated. The FCC would never ask consumers to waive one of these latter rights simply because a provider requested them to do so. Nor should the FCC tolerate the imposition of restrictions on VRS call handling.

D. Requiring VRS users to maintain multiple video devices is burdensome and discriminatory

In addition to the problems with obtaining truly “informed consent,” requiring – as an alternative to interoperability – that a VRS user keep multiple devices in order to access various VRS providers imposes on these consumers a burden that is not required of voice telephone users. As noted above, hearing people need a single telephone to make outgoing or to receive incoming calls, without regard to the carriers used by the people with whom

they are trying to converse.²² If VRS is the functionally equivalent of voice telephone service for people who use American Sign Language (ASL) – and the FCC has said that it is²³ – it is burdensome, inefficient, expensive, and against the principles of functional equivalency to expect consumers using VRS to use two or more separate video devices to achieve the same type of communication that hearing people can achieve using a single conventional voice phone.²⁴

In addition, several scenarios could play out in the future – all of which would be against the best interests of consumers – were all VRS consumers required to have multiple devices to reach their entire universe of telephone contacts. First, although it is now customary for many VRS providers to distribute video devices to consumers at no cost, this may not always remain the case. VRS users are already required to incur significant broadband expenses to receive the functionally equivalent of voice telephone services. If all VRS consumers were required to purchase multiple devices just to be able

²² While hearing people may have various phone extensions in their homes and business, each of these can reach and receive calls from all telephone subscribers, regardless of their telephone providers.

²³ *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking*, CC Dkt. No. 98-67, FCC 00-56, 15 FCC Rcd 5140 (March 6, 2000) at ¶22.

²⁴ As Petitioners note, in addition to the expense involved in purchasing and maintaining multiple devices, individuals with more than one device must maintain separate lists of contacts, unique names and passwords for each of their systems.

to make calls to and receive calls from everyone they wished to contact, their financial burden would become overwhelming.²⁵

Second, at present, only two devices are needed to use the services of any of the existing VRS providers. Without an interoperability ruling, however, there would be nothing to prevent new providers from entering the VRS market, and offer similarly restrictive products. This could force consumers into the ridiculous situation of having to acquire and maintain three or more devices to reach their universe of telephone subscribers. A ruling in favor of interoperability is needed to ensure that all new, as well as existing, video relay services are interoperable with one another.

Third, although VRS is currently linked to home and office-based computers, it is only a matter of time before VRS follows the mobile trends of voice telephone services. At that time, the lack of compatibility across VRS providers will force VRS users to choose which list of telephone contacts will be accessible to them from their hand-held devices. Unlike voice wireless users, these individuals would be severely restricted in their ability to contact others while on the move.

F. Technical difficulties complicate the use of multiple devices that prevents the provision of functionally equivalent VRS.

Even beyond the extraordinary inconvenience of having two separate devices, additional technical limitations prevent users with multiple devices

²⁵ Long waiting lists to obtain video devices are already prompting some consumers to purchase these devices on their own, in the interest of accessing

from receiving functionally equivalent VRS. An individual that uses a broadband connection is able to use two VRS devices by hooking that connection up to a NAT router.²⁶ The router may be connected to both a personal computer and a set-top video appliance. In the event that the router is already connected to a VP-100 and the user then elects to add a D-link, the D-link either must be connected to the existing router, or the existing router must be replaced. The user must next determine whether or not to give both the VP-100 and the D-link the same IP address.

A VRS user that chooses *a single IP address* with two separate video units may use only one of these devices at a time; i.e., the user must turn off the second device in order to make calls to and receive calls on the other appliance. The problem with this is that incoming calls directed to the device that is turned off may be rejected, causing the consumer to miss calls sent to the wrong unit. Deaf VRS users may never know that certain calls have not reached them and hearing parties who have made those calls will likely have no idea why their calls never arrived at their destination. This will not only deny the deaf party full communications access, it will discourage VRS use by hearing people.

VRS sooner rather than later.

²⁶ NAT stands for Network Address Translation, which provides transparent access to the rest of the IP network via one gateway computer. Each device may have a unique IP address, but the outside world only sees one address, the one of the server or NAT router. IF multiple devices share an IP address, only one can be “on” at any given time to avoid conflicts.

If the user assigns *different IP addresses* to the two set-top appliances (at an added cost)²⁷, the ability to receive inbound calls is still limited by the forwarding scheme defined by the router for “unsolicited incoming calls.” For example, if the router’s forwarding scheme is set to forward all unsolicited incoming calls to the VP-100 and the VP-100 is switched “on” and the D-Link is switched “off,” incoming calls will be received by the VP-100. If, however, the forwarding scheme is set to direct all unsolicited incoming calls to the VP-100, and the VP-100 is switched “off” and the D-Link is switched “on,” the call will *not* be received at all because the router had been set to direct all unsolicited incoming calls to the VP-100. In this case, the only way for incoming calls to reach the D-link would be to reset the parameter to direct incoming calls to the D-Link. Re-defining the forwarding scheme in this manner is fairly complicated for most lay people, and will generally require the assistance of an experienced technician.

Additionally, if the VRS user chooses two video appliances, two video inputs (RCA jacks) should be used (one associated with each set top appliance). This would require the VRS user to also change which video input is selected, in addition to selecting which set-top appliance is turned on. If the user does not have two available video inputs, he or she must either utilize an A/B type switch or use a Y-cable (at an added cost) to route

²⁷ For example, Time Warner charges \$44.95 for the first dynamic address and \$14.95 for the second, for a total cost of \$59.90 before surcharges, taxes, and other fees.

the video outputs from both set-top appliances to a single video input. In the case of using a Y-cable, if both set-top appliances are simultaneously turned on, the video presented on the screen of the television will be an unusable combination of the outputs from the two set-top appliances, giving the VRS user the impression that either one or both of the set-top appliances are broken and unusable. When using the A/B switch, the user must *both* remember which unit is turned on or off *and* select which video output is needed. It might be easy for the consumer to change which set-top appliance is “on” but harder to remember to change the setting of this video switch. If the consumer does not change the switch, he will not see the video on the set-top box and might assume that the appliance is not functioning.

IV. Exclusive Numbering Schemes Deny Consumers and Providers Dialing Parity in Violation of the Communications Act

The exclusive numbering system – i.e., the LDAP – created by the dominant VRS provider allows only customers using the provider’s equipment and services to access one another with telephone numbers that substitute for their IP addresses. This is to the exclusion of all other consumers who are not part of this closed system. So long as VRS providers are permitted to maintain these types of exclusivity agreements with their customers, VRS consumers will never have the same kind of easy dialing arrangements enjoyed by voice telephone users. Hearing people can make telephone calls anywhere in America using seven to ten digits, regardless of the wireline or wireless services to which they or their called parties

subscribe. They are not expected to have separate directories of telephone numbers that depend on the carrier of the person they are calling; nor should this be expected of VRS users.

The FCC has already spoken out on the importance of facilitating access to TRS through easy dialing arrangements. In the FCC's first order assigning 711 for TRS, the Commission concluded that three digit dialing would improve access to TRS, in furtherance of the ADA and section 255 of the Communications Act, by making relay access "convenient, fast and uncomplicated."²⁸ In the Commission's subsequent order mandating nationwide 711, the FCC concluded that despite the scarcity of this 3-digit numbering resource, its ability to "encourage market entry of new relay competitors and, through that avenue, increase innovation, lower prices, and enhance its quality," warranted its use for TRS.²⁹

The FCC's predictions that 711 would encourage access by people with disabilities and augment the number of voice-initiated calls proved to be accurate. After 711 was deployed, several states reported substantial

²⁸ *The Use of N11 Codes and other Abbreviated Dialing Arrangements, First Report and Order and Further Notice of Proposed Rulemaking*, CC Dkt 92-105, FCC 97-51 (February 19, 1997) at ¶56

²⁹ *The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Second Report and Order*, CC Dkt 92-10, FCC 00-257 (August 9, 2000) (711 Second R&O) at ¶4. The Commission based its decision in part on the difficulties that TRS users had been having when they tried to ascertain relay numbers through phone directories or directory assistance operators, the latter of whom were only voice accessible or unfamiliar with relay services.

increases in return-TRS calls.³⁰ A VRS scheme that utilizes restricted access numbers flies in the face of this regulatory effort to facilitate TRS access. Far from making access to relay easy and uncomplicated, the barriers created by this type of system makes it next to impossible for “outsiders” to access VRS users who are part of the restrictive network. In sharp contrast to the FCC’s 711 ruling, this moves VRS users away, not toward functional equivalency.

V. A Locked VRS System is Extremely Dangerous in an Emergency

In addition to being discriminatory, restricting the interoperability of VRS poses significant dangers in emergency situations. It is expensive for consumers, especially deaf consumers who generally have lower incomes, to pay monthly fees for both PSTN and high speed Internet service. Because conversing in ASL is preferable for many of these individuals, many have selected to pay only for broadband service, replacing their TTYs with video devices. Consumers need to know that their lines of communication will not be shut off if they need to summon emergency assistance when their regular VRS provider is operating at full capacity. This is especially critical in cases where crimes are being committed, in weather disasters, and in other widespread emergencies.

Although 911 call handling by VRS providers is currently waived, this waiver is temporary, set to expire on January 1, 2006. At that time, VRS providers will be expected to handle emergency calls, and to pass them off to

³⁰ Maryland and Massachusetts were among the states that reported

911 centers to the best of their abilities. But even before this waiver expires, or if it is again extended, consumers need to be able to access help in an emergency – even if it is through avenues other than 911 services. In addition to having the capacity to make calls for help, consumers also need assurances that *incoming* calls from emergency technicians and other individuals will reach them. Blocking incoming calls in an emergency situation can prevent a person in serious danger from receiving critical information needed for his health and safety. In the event that an emergency strikes a large area – e.g., an earthquake or terrorist attack – not having access to multiple providers to send and receive calls also conflicts with national emergency programs, including those involved in homeland security.

Historically, the FCC has taken a significant interest in facilitating emergency access by all Americans, including Americans with disabilities. The FCC's TRS standards contain explicit requirements to ensure prompt responses to text-based TRS emergency calls. Similarly, when wireless services proliferated in the 1990s, the FCC took a number of steps to ensure both TTY and hearing aid access to digital wireless services, for the specific purpose of ensuring consumer access to emergency services.³¹ Finally, the

increased call volumes for incoming calls after rolling out 711 access.

³¹ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Order*, CC Dkt No. 94-102, RM-8143, FCC 97-402, 12 FCC Rcd 22665 (December 23, 1997); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Fourth Report and Order*, CC Dkt 94-102, FCC 00-436 (December 14, 2000) (requiring TTY access to wireless E-911 services); *Access*

Commission's current efforts to have all TRS providers acquire TSP status are similarly focused on ensuring that telecommunications services directed to these populations facilitate access to emergency assistance. Every one of these measures is undermined by the refusal of a VRS provider to allow its customers to use a competitor's services in the event of an emergency.

VI. Publicly Administered Funds Should Not be Used to Support Restrictive VRS Practices.

Although VRS providers are not permitted to receive NECA compensation for the distribution of video devices, few would question that the more devices a provider distributes, the greater the rewards to that provider, in the form of compensation received for VRS minutes generated with those devices. What makes the need for an interoperability mandate especially compelling then, is that the provider who is imposing the exclusivity arrangement is indirectly – but appreciably – enjoying the support of a federally administered program that is funded by all long distance telephone subscribers. Though these subscribers are powerless to change the terms of the exclusivity arrangement, they are all bound by its restrictive policies. The TRS Fund was not created to support anything less than functionally equivalent relay service; no provider receiving money

to Telecommunications Equipment and Services by Persons with Disabilities, Report and Order, CC Dkt. 87-124, FCC 96-285 (July 3, 1996) (extending mandates for the hearing aid compatibility of wireline phones by classifying all workplace, hospital, nursing home, hotel, motel and prison telephones as “emergency” telephones.”)

through this federally administered program should be permitted to engage in restrictive practices that block VRS calls in any way.

VII. A Restrictive Network is Counter-Productive to the Efficient Use of Interpreter Services.

Much has been made throughout the FCC's various VRS proceedings about current interpreter shortages in the United States. Indeed, the dominant provider has even pointed to these shortages to support its opposition to a mandate for a minimum speed of answer for VRS services.³² CSD continues to maintain that the expanding demand for interpreter services created by a VRS mandate will eventually result in a greater supply of interpreters. Nevertheless, until this supply is fully developed – and even after that this supply is in place – it will be inefficient to have independent, closed VRS systems that each use an exclusive pool of sign language interpreters.

It is common sense for VRS providers to try to utilize a limited supply of interpreters efficiently and effectively. When consumers are restricted to the interpreters of a single provider, and that provider's interpreters are operating at capacity, consumers need to be able to use the interpreters of a competitor's service. Anything short of this supports monopolistic behavior that is against the best interests of consumers, as well as the FCC's goals of promoting a seamless communications network. The most effective way to

³² Comments of Sorenson Media, Inc. at 10-11 (October 18, 2004).

achieve low answer speeds is to allow *all* users to have *equal* access to the full nationwide pool of interpreters.

VIII. A Refusal to Allow Interoperability is Anti-Competitive and in Conflict with Longstanding Commission Practices

As the Petition points out in considerable detail, blocking incoming and outgoing VRS calls is an anti-competitive practice that is gradually leading to a VRS monopoly by one VRS provider. The Commission has historically frowned upon such exclusive arrangements because they reduce incentives for providers to respond to consumer needs and to develop new and innovative services characteristic of a free and open marketplace. We have already seen how the dominant provider's control of the market has perpetuated practices that are not in the best interests of consumers. In addition to the various marketing practices outlawed by the FCC in its January 26th Orders, the dominant provider's wait times are the longest, and only this provider has consistently opposed positions taken by consumers to eliminate the speed of answer waiver and mandate VRS. Although the dominant provider regularly insists that consumers have chosen to use its services because it offers the best VRS, this is not the case. As explained in the petition, it is the nature of the provider's LDAP (which enables point-to-

point communication but locks users into its VRS), as well as its ability to widely distribute VP-100s for free, that keep consumers within its hold. The Commission should not endorse these anti-competitive practices by allowing money to flow to the dominant provider from the government-administered TRS Fund. In order to encourage innovation, competition, and consumer choice, no VRS provider receiving federal reimbursement should be permitted to restrict its customers to only its services.

IX. Conclusion

Over the past two decades, both Congress and the Commission have undertaken a number of initiatives to expand telecommunications access by people who are deaf and hard of hearing. The Commission once explained that these were designed to enable people to “stay connected,” so that they could fully participate “in the economic and social mainstream of American life, now shaped by the communications revolution and information age.”³³ While “staying connected” for VRS users now uses new equipment and a new transmission path, the Commission’s goals of achieving a seamless, integrated, and fully accessible network of communication services have not changed. Nor has the primary objective of Section 225, to facilitate communication in a manner that is functionally equivalent to the communication available to people without disabilities.

Although video relay service can provide the most functionally equivalent relay service for many deaf and hard of hearing individuals, the refusal to allow consumers to access the services of multiple providers is denying them the full benefits of this service. This denial of interoperability unfairly blocks access to the network, violates the Communications Act (and the ADA) by failing to handle all incoming calls, discourages hearing people from using VRS, and allows the use of public funds to support anti-competitive practices that violate principles of functional equivalency.

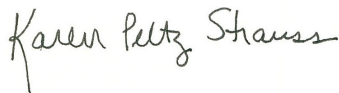
³³ 711 Second R&O at ¶1.

“Informed consent” cannot be a substitute for interoperability because consumers should not be expected to give up functional equivalency and because the consequences of withholding consent, as well as the way that the consent is acquired, make the voluntary nature of that consent highly suspect. The FCC’s January 26th Public Notice outlawing various VRS marketing practices made clear that where the practices of a provider “have the effect of requiring the consumer to choose a single VRS provider,” they should not be permitted.³⁴ Here, everything about the dominant provider’s contractual arrangement with its customers has this effect, even when “consent” is allegedly granted. Consumers are powerless to negotiate the conditions that are imposed on their VRS use; only the FCC has the authority to ensure that fully interoperable, functionally equivalent service will be delivered in tact in accordance with the ADA. CSD calls upon the Commission to fulfill this obligation.

Respectfully submitted,

/s/

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³⁴ Public Notice at 2.

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